

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5965 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KHUSALSING MULSING REVAR, DECEASED THROUGH HEIRS,

Versus

STATE OF GUJARAT

Appearance:

MR BJ JADEJA for Petitioners

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/01/97

ORAL JUDGEMENT

1. Shri Mukesh Patel, A.G.P. is present in the court and he was called upon to make the submissions on behalf of the respondent, but he stated that he has no instructions in the case as well as the papers of the case.

2. Heard learned counsel for the petitioners and perused the papers of this Special Civil Application.

The petitioners are the ex-jagirdars of Vantda which is a village in Modassa Taluka of Sabarkantha District. Under the provisions of the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 the jagirs were abolished. The Collector, Sabarkantha has declared the jagir as a proprietary jagir. The land bearing survey no.151 admeasuring 341 acres and 15 gunthas formed part of the petitioners' jagir. It was a forest land. On abolition of the jagir, the petitioners became the occupants of the said land. However with effect from 1-8-1973 all private forests in the State of Gujarat vested in the State Government on coming into force of the Gujarat Private forests Acquisition Act, 1972 (hereinafter referred to as the Act, 1972). So the land of survey no.151 vested in the State Government and the petitioners became entitled for the compensation, both for the land and also in respect of the trees under sec.6 of the Act, 1972. On 31st December, 1974, the predecessors of the petitioners made an application under sec.7 of the Act, 1972 and claimed compensation for the land, trees and mines and minerals. The details of which are as under:

Rs.60,000/- for lands

Rs.1,50,000/- for trees, and

Rs.2,50,000/- for mines and minerals.

The Deputy Collector, Sabarkantha as Gujarat Private Forest Acquisition Officer, Sabarkantha held the inquiry and by its order dated 23rd December, 1977 awarded Rs.8536/- and interest as compensation for the land. However, the claim of the petitioners for compensation in respect of the trees was rejected on the ground that the lands were not surveyed and settled on scientific basis under the provisions of the Bombay Land Revenue Code. The petitioners have preferred an appeal against the said order of the Acquisition Officer before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal enhanced the award from Rs.8536/- to Rs.16025/- for compensation in respect of the land. However, so far as the compensation in respect of the trees were concerned, the Revenue Tribunal has not accepted the same.

3. The time for making an application for compensation under the Act, 1972 was extended upto 31st December, 1980. The petitioners made an application on 6-12-1980, claiming Rs.1,50,000/- as compensation for trees. The Acquisition Officer dismissed the application on 29th July, 1983 on the ground that in the earlier inquiry the claim for trees was not accepted and also on the ground that there was no satisfactory evidence regarding the existence of the trees on the land in

dispute when its possession was handed over in the year 1973 to the State Government. The appeal preferred by the petitioners against the said order of the Acquisition Officer was rejected by the Gujarat Revenue Tribunal only on the ground that it cannot go behind its decision dated 20th October, 1978 passed in the earlier appeal. Hence this Special Civil Application.

4. The learned counsel for the petitioners contended that in earlier appeal the claim of the petitioners of compensation for trees was not gone into as the counsel, who was appearing for the appellants in the appeal, had given up their claim for the forest trees as according to them there was no regular survey and settlement in respect of this land and that concession is not binding. It has next been contended by the counsel for the petitioners that in the earlier appeal, the claim of the petitioners for compensation of trees was not decided on merits. However, the counsel for the petitioners admit that this claim has been decided on merits by the lower authority. As the judgment in the earlier appeal was not on merits, the counsel for the petitioners contended that the Tribunal has committed serious error in not deciding the matter on the ground that this issue is concluded.

5. I have given my thoughtful consideration to the submissions made by the counsel for the petitioners and I find sufficient merits in the contentions of the counsel for the petitioners. The Tribunal has declined to decide the matter on merits only on the ground that as it was of the opinion that it cannot go behind its earlier decision dated 20th October, 1978. However, the Tribunal finds the earlier decision given by it not correct on merits. So far as the Acquisition Officer is concerned, the claim of the petitioners for compensation of trees has not been decided on merits, but rejected only on the ground that the same has been earlier rejected by the Tribunal. So the Tribunal has not gone on the merits of the matter, but on technical ground it has rejected the claim. The Tribunal has not considered an important aspect that in earlier appeal this claim of the predecessor of the petitioners was not decided on merits. It is true that the counsel who was appearing for the appellants in the previous appeal has given up this claim, but it is equally true that it was given up on the ground that the land was not surveyed and settled. So any consent made by way of giving up the plea on the ground that the land was not surveyed and settled may not be binding on the petitioners. The matter would have been different where unconditionally the claim would have been abandoned or given up but the claim has been abandoned or given up as

the counsel, who was appearing for the appellants in that appeal was of the view that the land was not surveyed and settled. It is a case of the petitioners that this land was surveyed and settled and further that it is a proprietary right of the petitioners and as such, even if the land was not surveyed and settled their right of compensation for trees will not come to an end. This is a plea on merits and the Tribunal prima-facie found the earlier decision to be wrong. In such circumstances, the Tribunal instead of non suiting the petitioners on the aforesaid ground should have decided the matter on merits. It is a case of acquisition of the private forest of the petitioners and a further right of their compensation conferred to the petitioners under the Act, 1972. In case, the petitioners are entitled for compensation then the Tribunal should have gone on the merits of the matter. The matter would have been different where the concession would have been made unconditionally and secondly on merits the petitioners would not have the case. The concession of the nature made by the counsel who was appearing for the appellants in the previous appeal should not be taken to be binding on the petitioners.

6. There is another error apparent on the face of the order of the Tribunal. The Tribunal has proceeded with assumption and presumption as if this claim of the petitioners has been adjudicated and decided on merits by the Tribunal in the earlier appeal which is factually not correct. That claim has not been adjudicated as the counsel who was appearing for the appellants therein has abandoned and given up the same.

7. In the result, this Special Civil Application succeeds and the same is allowed. The order of Gujarat Revenue Tribunal dated 25th October, 1985 made in Appeal No.TEN.A.A.216/83 is quashed and set aside and the matter is remanded back to the Tribunal with the direction to decide the same on merits. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-